

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE No. 91684
Issued to: Albert A. KENNEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2024

Albert A. KENNEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1, now 5.30-1.

By order dated 8 October 1974, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's seaman's documents for two months on 18 month's probation upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the M/V VINEYARD QUEEN under authority of the license above captioned, on or about 20 August 1974, Appellant did fail to determine the position of the vessel, thereby contributing to a grounding.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a chart, other documents, and the testimony of one witness.

In defense, Appellant offered in evidence his own testimony and affidavits concerning the operation of a foghorn.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents, issued to Appellant, for a period of two months on 18 months' probation.

The order was served on 8 October 1974 and the decision on 15 October 1974. Appeal was filed on 14 November 1974.

FINDINGS OF FACT

On 20 August 1974, Appellant was serving as Master on board the M/V VINEYARD QUEEN and acting under authority of his license when the vessel grounded in the vicinity of Castle Island, South Boston, Massachusetts, in charted shoal water. The M/V VINEYARD

QUEEN is a 60 foot long vessel engaged in carrying paying passengers on a regular commuter run between Rows Wharf, Boston and Pemberton Pier, Hull, Massachusetts.

At about 1700 on 20 August 1974, Appellant observed that the radar in the wheelhouse of the M/V VINEYARD QUEEN did not produce a clear display usable for navigational purposes. The radar was "spoking" and objects were not identifiable on its scope. At 1731 Appellant caused the M/V VINEYARD QUEEN to get underway carrying 88 passengers.

At the time of getting underway, Appellant knew or should have known that the tide was ebbing with a force of about 1.2 knots, there was a 10 knot southeasterly wind, and the visibility was reduced to about one mile or less, in the channel which he was about to transit.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that (1) it was clearly erroneous to conclude that a judgment decision to continue the schedule commuter trip amounted to negligence; and (2) it was clearly erroneous to conclude that to proceed without radar amounted to negligence.

APPEARANCE: Glynn & Dempsey by Leo F. Glynn, Boston, Mass.

OPINION

Appellant contends that there is no proof of negligence on his part since he navigated his vessel as any prudent Master of a ferry would have navigated under the circumstances, because neither the decision to continue the trip nor the decision to proceed without radar constituted negligence.

I do not conclude that Appellant acted with all the prudence required under the circumstances. It has been a rule of long standing that "In the case of a grounding, there is a rebuttable presumption or inference of negligence...because vessels under careful navigators do not run aground in the ordinary course of things." Appeal Decision No. 1200 (RICHARDS) (see also Decisions 699, 672, 987, and 1197).

The record in the instant case presents no rebuttal to the presumption of negligence. Indeed the evidence presented by Appellant at the hearing made clear his foreknowledge of difficulties with the radar and impeding weather conditions.

Appellant did not produce any evidence to show that he had any means to accurately ascertain the position of his vessel. Under those circumstances it was incumbent upon him to anchor his vessel until he could safely navigate.

Appellant's contention that he could not safely anchor due to vessel traffic in the channel is without basis. By his own testimony the range of visibility when the M/V VINEYARD QUEEN was abeam buoy number 11 was only 25 feet. A safe emergency anchorage area outside any channel was readily available at a number of locations near his track.

Appellant contends that the standards of care required of ferry-boat operators in fog are less stringent than those standards required of other vessels. I agree with this contention as set forth in Appeal Decision No. 1352 (PRIEFER). This special relaxation of the standard of care is, however, limited to permitting ferry-boats to get underway and to maintain steerageway in fog conditions which would dictate that vessels not required for public necessities remain moored or at anchor. This exception for public necessity, recognized in The ORANGE, 46 f. 408 (D.C. N.Y., 1891) is strictly limited to circumstances without "any sufficient evidence to show that the ferry-boat was not carefully and skillfully handled." In the instant case there is clear evidence that the M/V VINEYARD QUEEN went aground in charted shoal waters, not due to some outside force or mechanical failure, but because Appellant proceeded with no capability to accurately determine his position.

CONCLUSION

There is substantial evidence of a reliable and probative nature to support the charge of negligence in that Appellant failed to act as a reasonably prudent person of like station and experience under the prevailing circumstances. The prudent navigator will not put his vessel and passengers to the risk of entering and continuing in a dense fog in the vicinity of shoal waters when he knows he has no way to accurately establish his position.

ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts, on 8 October 1974, is AFFIRMED.

E.L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 4th day of June 1975.

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